



## U.S. MERIT SYSTEMS PROTECTION BOARD

**Case Report for March 27, 2015**

### **The U.S. Supreme Court Issued a Decision in the Following Case:**

**Petitioner:** Peggy Young

**Respondent:** United Parcel Service, Inc.

**Tribunal:** U.S. Supreme Court

**Case Number:** No. [12-1226](#)

**Decision Below:** [707 F.3d 437](#) (Fed. Cir. 2013)

**Issuance Date:** March 25, 2015

#### **Disparate Treatment of Pregnant Women Pretext Analysis in Pregnancy Discrimination Claims**

The petitioner worked for the respondent United Parcel Service (UPS) as a driver, and her responsibilities included pickup and delivery of packages. In 2006, she became pregnant and was given instructions by her doctor that she should not lift more than 20 lbs. during the first 20 weeks of her pregnancy, and no more than 10 lbs. for the remainder of her pregnancy. UPS required drivers such as the petitioner to be able to lift parcels weighing up to 70 lbs. (and up to 150 lbs. with assistance). After the petitioner notified UPS of her restrictions, UPS informed her that she could not work while under the lifting restriction. As a result, the petitioner was forced to stay home without pay for the majority of the time she was pregnant, and eventually lost her employee medical coverage.

The petitioner filed a lawsuit in federal court alleging that UPS unlawfully discriminated against her due to her pregnancy by refusing to accommodate

her lifting restriction. As part of her claim, the petitioner alleged that UPS accommodated other drivers who were similar in their inability to work. UPS responded that, pursuant to its internal policy, the other drivers it accommodated were: (1) drivers who became disabled on the job; (2) drivers who had lost their Department of Transportation certification; and (3) drivers who suffered from a disability covered by the Americans with Disabilities Act. Because the petitioner did not fit any of those three categories, UPS claimed that it was not obligated to accommodate her restrictions. UPS moved for summary judgment, and the District Court granted the motion. The court held that the petitioner could not show intentional discrimination through direct evidence, nor could she make out a prima facie case of discrimination under the *McDonnell Douglas* test. The court stated that the employees covered by UPS's accommodation policy were not similarly situated comparators to the petitioner, and that UPS's reliance on its policy was a legitimate, nondiscriminatory reason for failing to accommodate pregnant women.

On appeal, the Fourth Circuit affirmed. It held that UPS crafted a pregnancy-blind policy that was facially neutral and a legitimate business practice, and that the policy was not evidence of a discriminatory animus toward pregnant workers. The court further stated that the petitioner was not similarly situated to any of the types of employees covered by the policy.

The petitioner appealed the Fourth Circuit's ruling to the Supreme Court, and the Court granted certiorari to determine whether, and in what circumstances, an employer that provides work accommodations to nonpregnant employees with work limitations must provide work accommodations to pregnant employees who are "similar in their ability or inability to work."

**Holding: The Court vacated the Fourth Circuit and remanded the matter for further consideration. Justice Alito concurred in the judgment only, Justices Scalia, Thomas, and Kennedy joined in dissent, and Justice Kennedy issued a separate dissent.**

1. The Court held that an individual pregnant worker who seeks to show disparate treatment may make a prima facie case under the *McDonnell Douglas* test by showing that she belongs to the protected class, that she sought accommodation, that the employer did not accommodate her, and that the employer did accommodate others "similar in their ability or inability to work." The employer can then attempt to justify its refusal to accommodate the employee by producing a "legitimate, nondiscriminatory" reason for the denial of the accommodation. This reason, however, cannot consist simply of a claim that it is more expensive or less convenient to include pregnant women to the group of employees the employer will

accommodate. If the employer produces such a reason, the employee can show that the proffered reason is actually pretext for discrimination by providing sufficient evidence that the employer's policy imposes a significant burden on pregnant workers, and that the employer's proffered reason is not sufficiently strong to justify the burden. Additionally, the employee can create a genuine issue of material fact regarding whether a significant burden on pregnant workers exists by providing evidence that the employer accommodates a large percentage of nonpregnant workers while failing to accommodate a large percentage of pregnant workers.

2. The Court remanded the matter to the District Court because the record showed that the petitioner created a genuine issue of material fact regarding whether UPS provided more favorable treatment to employees whose situations could not reasonably be distinguished from hers.

3. Justice Alito concurred in the judgment, but stated that he did not believe that the Pregnancy Discrimination Act authorized the courts to evaluate the justification for a truly neutral policy.

4. Justice Scalia, joined by Justices Kennedy and Thomas, dissented, stating that he believed the majority's standard for establishing pretext was not derived from the pregnancy discrimination act.

5. Justice Kennedy issued a separate dissent to recognize the importance of issues facing pregnant women in the workplace.

## **The U.S. Court of Appeals for the Federal Circuit issued the following nonprecedential decisions this week:**

**Petitioner:** Gary S. Schnell

**Respondent:** Department of the Army

**Tribunal:** U.S. Court of Appeals for the Federal Circuit

**Case Numbers:** [2015-3006](#)

**MSPB Docket No.** CH-1221-07-0700-X-2

**Issuance Date:** March 25, 2015

**Holding:** The Court affirmed the Board's dismissal of the petitioner's petition for enforcement based on its finding that the respondent complied with its order regarding the appropriateness of the petitioner's job placement and the sufficiency of the interest payments.

- **The MSPB did not issue any precedential decisions this week**

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